



LOUISIANA PUBLIC DEFENDER BOARD MEMO

To: The Board
From: Jean M. Faria
Re: Report of the State Public Defender
Date: September 30, 2009

STAFFING AND ADMINISTRATION

The Board/Staff training was held August 28-29, 2009. All staff and seven Board members attended. From the staff perspective, it was invaluable. The staff will follow up the training with its own strategic planning in house.

At its June meeting the Board authorized the creation of five new positions: four administrative support positions and the creation of a capital case coordinator. After thorough discussion among staff and Board members handling capital cases, I am asking the Board to authorize staff to submit job descriptions for the capital coordinator, a mitigation specialist and an administrative assistant to support that unit. The short term plan will be for this unit to take over the assignment, supervision and monitoring of all aspects of all indigent capital cases in the state. This is a long process as we have to submit the job descriptions to the Division of Administration and Civil Service and convince the Commissioner to lift the job freeze. I believe we have sufficient funds for these positions now as we have two unfilled positions and I expect to recoup funds based on an amendment to a grant held by one of our contract programs.

The Division of Administration is taking over the HR functions of agencies with less than 100 employees. We are changing the position to a paralegal position for General Counsel.

CAPITAL GUIDELINES

As indicated at the last Board meeting and again in my email to the Board, I will be asking for the Board to approve for promulgation the Capital Guidelines which were previously distributed to all of the District Defenders; the Right to Counsel Committee of the State Bar Association; Judge John E. Conery, both as President of the District Judges Association and as the Chair of the Capital Crimes Education Committee; and the District Attorneys Association. We have received two questions from the defenders about flat fee contracts and the definition of "monitoring" as contained in the guidelines.

THE DISTRICTS

26th Judicial District: Mr. James Phillips, the District Defender for the 26th JD, (Bossier and Webster Parishes) passed away this month. We are in the process of convening the district selection committee to begin the search process for the new defender.

34th Judicial District: The selection committee for the 34th JDC submitted the names of three nominees for the position of District Defender to succeed Mr. Greg Duhy who resigned recently. The committee members were Mr. Paul Tabary (chair), Mr. Daniel Dysart, and Mr. Alan Bouterie. The nominees were Messrs. William Egan, Thomas Gernhauser, and Edward Rantz. Executive staff interviews were conducted on September 24, resulting in a recommendation to the Board for the District Defender position.

The District Defender Advisory Council (DDAC) met on September 22, 2009 to discuss changes to the database, timekeeping, the timing of the upcoming annual survey, and three proposed trainings. The annual survey will be revised and sent to the districts, along with last year's answers, highlighting omissions and errors and newly included questions. The annual survey will go out on November 2, 2009 and be due into our offices by January 10, 2010 in order for the Board to meet its two report deadlines of February 1 and March 1.

Several District Defenders warned that with the current levels of funding, they would be out of money before the end of the fiscal year. Both the defenders from the 24th and 29th JDs stated that their monthly income was down by 10% a month and \$25,000-30,000 respectively from their income received in CY 2008.

JUVENILE PROJECTS

In September, there were six juvenile site visits: 8th, 10th, 11th, 28th, 35th and 39th JDCs.

On September 23rd, seven people were interviewed for the Juvenile Compliance Officer position. A recommendation to the Board to fill this position will be made.

A contract for Lynette Roberson for the JIDAN Coordinator was submitted to the Office of Contractual Review.

The Louisiana Children's Code Committee has proposed amendments to the Children's Code regarding the legal presumption of indigence of all children in Louisiana. A resolution will be presented to the Board recommending this legislative change.

The Legislative Task Force for Child Protection Cases met and agreed on a proposal which should result in the full implementation of the Parent Representation Program statewide in all defender offices.

Finally, Juvenile Regional Services was elected Co-Chair of the Orleans Parish Children and Youth Planning Board – a statutorily mandated board created to coordinate all entities working in the Parish which affect children and youth.

BUDGET UPDATE

On September 10, 2009 Budget Officer Buchanan, Training Director Kilborn, IT&M Officer Stilling and SPD Faria met with Tom Moss from the Public Strategies Group (PSG) under the terms of our grant agreement to discuss the new output/outcome budgeting process, entitled Activity Performance Review, now employed by the Division of Administration. A second meeting was held September 17, 2009 at LPDB offices with Beverly Stein, President of PSG to review the new budgeting process. The working group on staff includes Budget Officer Buchanan, ITM Officer Stilling, Special Projects Advisor Heather Hall and SPD Faria. The first draft of this budget is due to the Division on October 5, 2009. Ms. Stein is currently reviewing several of our proposed “activities” we drafted in compliance with the new budgeting process.

Unexpectedly, the Division of Administration notified all agencies on September 18, 2009 that we still have to complete our old 150 plus page budget forms which they are calling the FY 2010-2011 Supplemental Budget Request Documents. The Budget Division has requested overtime to meet these deadlines.

DATABASE

The Bar Information Program of the American Bar Association is considering our application to have David Newhouse, from the Spangenberg Project at George Mason University Law School, come to LPDB for a site visit to work with staff on database questions. The timekeeping component is being loaded into the 19th district’s sector of the database for beta testing. If the test is successful it will be made available to all districts.

FIELD MEETINGS AND SITE VISITS

Orleans: Compliance Officer Di Giulio continued frequent visits and consultation with the Orleans Public Defender, the District Attorney and some of the judges in an effort to improve working relations between the parties. At the request of DA Leon Cannizzaro, and with the help of Kerry Cuccia, the contempt charges against the young investigator were dismissed. The District Attorney has indicated that the investigator will not be prosecuted for the kidnapping arrest.

On September 21, 2009, the Court of Appeals reversed Judge Marullo’s contempt finding against Assistant Public Defender Mr. Kendall Green without waiting for a response from the State. The writ application was prepared by Mr. Josh Perry. A copy of the writ grant is included in the board book.

23rd Judicial District: The Compliance Officer made a site visit to the new offices recently opened by newly appointed District Defender Alan Robert, where after a brief tour Mr. Robert discussed changes he is making in the structure of the office to better serve indigents in his district. He also discussed drafts of contracts he intends to execute with each of the attorneys working under the supervision of his office in the district.

21st Judicial District: The Compliance Officer made a preliminary site visit to the courthouse in Livingston Parish to observe the handling of motions and revocations for prisoners. Assistant Public Defender Thomas Frierson handled the docket and met with Compliance Officer Di Giulio to explain the procedure for assigning cases and filing of preliminary motions. Follow up

site visits are to be scheduled to address concerns of continuity of representation and delays in court appearances.

27th Judicial District: Along with Training Director Julie Kilborn, Compliance Officer Di Giulio conducted a Preliminary Hearing training in Opelousas attended by 30 lawyers and staff, most from the 27th but some from the 18th and 16th judicial districts. This is an ongoing training and compliance project which will be conducted around the state. Its purpose is to assist the

districts in reducing the delay between arrest and first meaningful court appearance by the use of preliminary hearings. Discovery issues are also discussed in a position paper prepared jointly by Training and Compliance. The feedback from the participants was mostly positive.

19th Judicial District: Compliance Officer Di Giulio attended an open meeting of a joint initiative to address truancy and juvenile issues sponsored by Mayor Kip Holden and District Attorney Hillar Moore. Presentations were made by the sheriff, chief of police, and staff from the DA's office outlining the statistics and issues the task force hopes to address. The SPD intends to continue staff participation in this project, and to encourage the District Defender in the 19th to become an active participant as well.

Capital Post Conviction Project of Louisiana: State Public Defender Faria, Training Director Kilborn, and Compliance Officer Di Giulio conducted a site visit to the offices of CPCPL in order to evaluate the management, supervision, and internal operations of the office to determine capacity and to review funding issues. Interviews of key staff members, as well as Director Gary Clements, were conducted. In addition to the need for routine assessments, the review was conducted in preparation for the convening of the Supreme Court's Post-Conviction Task Force on October 14, 2009.

TRAINING

The LPDB has received the grant in the amount of \$250,000 for the Capital Case Litigation Initiative through the Office of Justice Programs (at the Department of Justice). The terms of the grant allow this 24-month project to start immediately. With this, the LPDB will provide two confidential, bring-your-own-case trainings for capital defense attorneys, mitigation specialists, and investigators; two confidential trainings for capital prosecutors in Louisiana; and one joint training for capital prosecutors and defenders in the field of mental retardation.

Training Director Kilborn, Information Technology Management Officer Stilling, and Data Entry Specialist Williams have begun the last half of the database training in the districts.

The Budget Training for the District Defenders was completed the first week of September. Budget Officer Buchanan conducted the training, providing details of the annual budget and monthly reporting requirements for the District Defenders and their bookkeeping staff

The Employment and Labor Law trainings have also been completed. Mr. Mark Falcon presented on various issues that potentially affect the District Defenders' offices, including such matters as overtime, workplace violence, employee harassment and discrimination, and employee surveillance.

The trainings for the Preliminary Hearing Project are underway by Compliance Officer Di Giulio and Training Director Kilborn. The first training was held in Opelousas on September 14th; 30

attorneys and investigators attended. Additional locations that have been scheduled are the 4th (Ouachita / October 9th); 14th (Calcasieu / October 29th); 26th (Bossier, Webster / November 9th); and 36th (Beauregard / December 1st). Additional sites will soon be scheduled through early spring.

An annual new attorneys skills training is being developed. The exact dates and location for this in-depth training are still in the works; it is anticipated that the first session will be held in

September, 2010. The 19th District Defender has agreed to be part of a pilot project for this annual skills training. The pilot project will hold 3 or 4 one-day skills trainings for the public defenders in the 19th, beginning in December 2009.

The 19th District Defender has also agreed to host a Defense Initiated Victim Outreach training which is scheduled for December 11th. This presentation will be open to defense attorneys and prosecutors and seeks to provide lawyers the skills to address the needs of victims and their families through the legal process, especially in capital cases.

From October 4 – 6, Training Director Kilborn will attend the annual Litigation Persuasion Institute provided by the Kentucky Department of Public Advocacy in Faubush, Kentucky. She will participate as faculty in the Advanced Investigation Track which focuses on team work between investigators and attorneys.

GENERAL

Pursuant to the request made by Mr. Mitchell Bergeron, District Defender for the 14th Judicial District, the staff is going to Calcasieu for five days to complete a case count and site visit.

Based on a request made at the August Board and Staff training, a resolution regarding victim's rights will be presented to the Board for passage.

On September 14, 2009 the State Public Defender met with Mr. Pete Adam's, Executive Director of the District Attorney's Association. The meeting addressed the capital guidelines and concerns surrounding funding and the current status of the state budget. A copy of the memorandum addressed to him is attached to this report.